

Rule 1.17. Sale of Law Practice.

A lawyer or a law firm may sell or purchase a law practice or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold in the geographic area in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(c)(1) the proposed sale and the identity of the purchaser;

(c)(2) the client's right to retain other counsel or to take possession of the file; and

(c)(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of ~~mailing of the~~sending written notice; and

(d) The fees charged clients are not increased by reason of the sale.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities who can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Notification

In complying with this Rule, a seller must undertake reasonable steps in locating the clients who would be subject to the sale of the practice or area of practice. Typically, this would require attempts to contact the client at the last known address.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice or the area of practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a ~~judiciary~~ judicial position.

[3] The requirement that the seller cease to engage in the private practice of law in the geographic area does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the geographic area. The remaining language of the Model Rule Comment [4] has been intentionally omitted as unnecessary.

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold, the law firm or the lawyer remaining in the active practice of law must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). Selling a law practice or an area of practice is distinct from selling an ownership interest in a law firm, and nothing in this Rule prohibits the latter even when the divesting lawyer remains active in the practice of law as a non-owning associate or in an of counsel capacity. For example, a lawyer or law firm with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner or law firm may not thereafter accept any estate planning matters. Although a lawyer who leaves a geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] ~~This~~The Rule requires that the seller's entire practice or an entire area of practice be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser, the client must be given actual written notice of the contemplated sale.

[8] Intentionally omitted as unnecessary.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged to the clients of the practice. Existing ~~agreements~~arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); to charge reasonable fees (see Rule 1.5); to protect client confidences (see Rule 1.6); to ~~resolve conflict situations~~avoid disqualifying conflicts and secure the client's informed consent for those conflicts for which there is agreement (see Rules 1.7; 1.9 and Rule 1.0(e) for the definition of informed consent); to releases of liability (see Rule 1.8(h); and to withdrawal of representation (see Rule 1.16)).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the ~~transfer~~transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

[15a] This Rule does not prohibit a lawyer from selling an interest in a law firm and thereafter continuing association with the firm or in an of-counsel capacity.

[15b] The body of the ABA Model Rule 1.17 does not provide for inclusion of the identity of the purchaser in the written notice; however, Comment [7] to the ABA Model Rule does indicate that the identity of the purchaser should be given in writing to clients. Utah's Rule 1.17 departs from the ABA Model Rule by requiring only one written notice and enumerating in the body of the rule all required content of the notice.

[15c] Section (c)(3) of Utah's Rule 1.17 deviates from the ABA Model Rule by providing that the 90-day client objection period begins to run from the mailing of the notice rather than from receipt of the notice. The only practical way to prove receipt would be by commercial courier or certified/registered mail. Proving receipt of notice could therefore be cost-prohibitive, especially to the small sole practitioner. Often

109 when a lawyer does not have a viable address for a client, it is because the subject-matter of the
110 representation has become stale or the client has failed to keep in touch with the lawyer presumably due
111 to a loss of interest in the matter. Both the Utah Rules of Civil Procedure and the Utah Rules of Criminal
112 Procedure allow for notices to be given by regular U.S. mail at the last-known address for the client and
113 provide a presumption of service upon deposit of the notice in the mail, postage pre-paid. There does not
114 appear to be good reason to place a more onerous burden upon a lawyer selling a law practice or area of
115 practice. Whether the client received actual notice of the proposed sale of a practice or area of practice,
116 the client is not abandoned; there is new counsel to protect the client's existing rights. The last paragraph
117 of Model Rule 1.17(c)(3) has been intentionally omitted as unnecessary.

118 [15d] The Utah version of Rule 1.17 deletes the provision of the ABA Model Rule (c)(3) relating to
119 obtaining court order for transfer of representation in those instances where the lawyer cannot give and
120 prove actual notice of the proposed sale of a law practice or area of practice to a client. As discussed
121 above, Utah's version of Rule 1.17 does not require proof of actual notice of the sale of a law practice or
122 area of practice before the 90-day client objection period begins to run; therefore, it is impossible to know
123 which clients received actual notice and which did not.

124 [15e] The Utah version of Rule 1.17 changes the context of the ABA Model Rule 1.17(d) regarding
125 fees from "shall not" to "are" because the ABA wording seemed to be in the nature of a mandate and out
126 of place with the conditional language of the Rule.